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Antitrust after Microsoft
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PBot inside

Intellectual Ammunition

Research and commentary for elected officials from the nation's leading think tanks. Visit us online at www.heartland.org

Potshots

Most people are doing their best to join the ranks of the rich, not fight them.

KENNETH SMITH

If you want breakfast in bed, sleep in the kitchen.

A SIGN OF THE TIMES

I am not much for civic morality; I much prefer the real thing.

REV. ROBERT SIRICO

Washingtonians think their town resembles Paris. If Paris passed gas, you'd have Washington.

ETTY ALLEN

The one genuine surprise of [the] post-campaign campaign [was] that an operation headed by a latter-day Daley out of Chicago couldn't scare up a couple of thousand votes when needed. It is the lament of every generation: We are not the men our fathers were.

PAUL GREENBERG

I'll stop procrastinating tomorrow.

The one thing that unites all human beings, regardless of age, gender, religion, economic status or ethnic background, is that, deep down inside we ALL believe that we are above-average drivers.

DAVE BARRY

Liberty Began in State Legislatures

by the Hon. Ray Haynes

As a state legislator, there isn't a day that goes by that I am not faced with some statutory, budget, or regulatory issue on which federal policy is having an impact. Unfunded federal mandates on the states affect state legislatures and their decisions on issues more than any other single factor.

Throughout this country, in the state capitols, state legislatures and Governors find themselves in a tug-of-war with the national government. The reason for that tug-of-war: The federal government has far exceeded its authority under the Constitution.

But this is not a new issue. The debate over the balance of powers between the states and the national government goes back to the American Revolution and the original Articles of Confederation. It was at the heart of the battles at the Constitutional Convention in 1789. It was the root cause of the Civil War, the bloodiest war in our history.

AN EXCUSE FOR BAD POLICY?

Many people who justify federal intervention into state matters talk about the civil rights movement of the 1950s and 1960s, when federal troops protected young African-American children from angry white mobs as they tried to integrate public schools. But, as with any policy, one example of the policy promoting a good cause is not justification for a bad policy.

While the exercise of federal power in the civil rights era may have been appropriate in defense of a just cause, there are just as many examples of bad federal intervention.

The fugitive slave law, which required that an escaped slave be returned to his or her owner, even when a state had laws to protect the escaped slave, shows we shouldn't accept the notion that the exercise of federal power is always going to be used to guarantee individual rights, or is always preferable to state law. Just ask the Japanese-Americans who spent World War II behind barbed wire in Manzanar because a federal policy required the internment of some American citizens without due process.

Many wish to abandon the principle of divided sovereignty—to allow our system of federalism to be dismantled—because they find it easier to enact social and economic policy at the national level rather than on a state-by-state basis. This is shortsighted reason for abandoning the principle of federalism.

Representative democracy is not supposed to be easy. Balancing the interests of hundreds of

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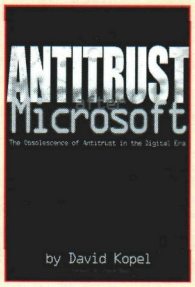

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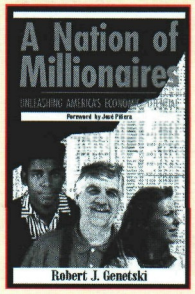

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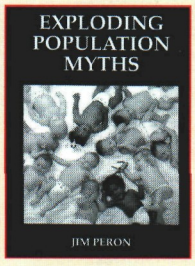

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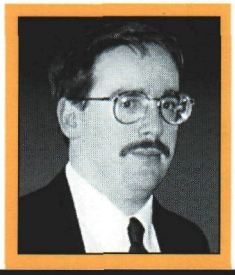

News from the Heartland

by John R. La Plante
Managing Editor

We may live in one nation, but not in one national democracy. And that's a good thing.

As the controversy last year over the Electoral College reminded everyone, states, and state governments, matter. And as Ray Haynes explains in his cover essay, they should.

Though "some find it easier to enact social and economic policy at the national level rather than on a state-by-state basis," Haynes argues "this is shortsighted reason for abandoning the principle of federalism." Yes, it's more difficult to fight 50 battles across the nation than one in Washington, but the cause of good government—"not to mention the even more important cause of liberty"—is better served by this arrangement.

EXCERPT

Antitrust law, always of questionable value, was a favorite tool of the last Presidential administration. The Heartland Institute has recently published a new book that questions the practicality of antitrust law in the digital age. David Kopel argues in *Antitrust after Microsoft* that antitrust simply cannot keep up with the "Internet time" on which the New Economy operates.

NEW COLUMNISTS

Adrian Moore has taken on new responsibilities at the Reason Public Policy Institute (RPPI), and so turns over the privatization column to Robin A. Johnson. Johnson is a senior policy analyst with RPPI and serves as an elected alderman in his community in rural Illinois. He has earned an M.P.A. from Western Illinois University and has authored articles in *Government Finance Review* and other publications. In his inaugural essay for *Intellectual Ammunition*, Johnson details how a poorly executed contracting scheme threatened the Christmas of thousands of Illinois residents. Johnson can be reached by email at robinj@reason.org.

Angela Logomasini joins us as one of the several occasional contributors to the Environment column. Logomasini, who serves as director of risk and environmental policy at the Competitive Enterprise Institute, has had her work published in such major newspapers as the *Houston Chronicle* and important journals, including the *Journal of Regulation and Social Costs*. She earned an M.A. in politics from Catholic University of America and has served as a legislative assistant to Senator Sam Brownback. In her first column for us, Logomasini tells the story of one state official who fought the U.S. EPA—and won. She can be reached at alogomasini@cei.org.

IN OTHER DEPARTMENTS

Writing in this issue's Health department, guest columnist Merrill Matthews admits that prescription drug prices are high, but asserts that drug company profits are not out of line with those of other "New Economy" businesses.

In Crime, Morgan Reynolds makes the case for conceal-carry laws. Education specialist George Clowes predicts that a recent federal appeals court decision will make it more likely that the U.S. Supreme Court will rule definitively on the constitutionality of vouchers. Bill Ahern reveals some of the hidden costs of the federal income tax system, Bartlett Cleland surveys the four top policy issues of the year in the technology arena, and John Kramer gives an update on the licensing troubles of a Las Vegas entrepreneur.

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millions of people in different parts of the country is no small task. Divided sovereignty is by far the best, and perhaps the only, way of allowing people to shape public policy to meet their local needs.

Divided sovereignty is by far the best, and perhaps the only, way of allowing people to shape public policy to meet their local needs.

One size does not fit all. The needs of New York and California are not the same as Kansas, Colorado, Montana, or Arkansas. Yet the large states could dictate the policies of the small if this country were to abandon the federalism of the Constitution.

The result would be oppression. And it is oppression—the unjust or excessive use of power—which we, as elected officials, must always be on guard against, even when our intentions are of the highest purpose.

PREVENT THE MONOPOLY

I'm a legislator, and I am very proud of the public trust I hold. I try to stay constantly aware of the fact that when my colleagues or I propose a law it is, by definition, legislating coercion.

Governments are monopolies. In the areas in which our constitutions grant us power, government has the ability to change the day-to-day lives of millions of people. In most cases, if people do not follow the law, we have the force of the state to coerce them by taking from them their property, their freedom, and, in some cases, even their lives. Government power too easily becomes government oppression.

And there are many forms of oppression. Excessive taxation is a form of oppression, because it is the confiscation of the property of citizens. Excessive regulation is a form of oppression, because it forces people to engage in activities that waste their time and effort, often to no good end. Ignoring private property rights is a form of oppression, because the freedom to own land is one of the fundamental rights upon which this nation was founded.

Government is different. It has powers beyond anything in the private sector, and it has the power of coercion backed by the force of law and the police. That is why federalism is so important—to prevent the concentration of power in any one level of government. With the concentration of power, there comes the opportunity for oppression.

JUST SAY NO

There is one fundamental principle behind the federalism policy in the Constitution, and it can be summed up best by quoting Nancy Reagan from her anti-drug campaign: "Just Say No."

Whenever a state legislature is faced with a federal agency going beyond its authority, I suggest states ought to "Just Say No."

If the federal government tries to take land away from the people of the state, "Just Say No."

If EPA or OSHA or some other federal agency tries to dictate policy in the state contrary to that state's policy, "Just Say No."

And if the federal government tries to prevent a state from pursuing a policy the legislature has enacted and the people of the state support, tell the federal government where to go, and then "Just Say No."

Practically speaking, telling the federal government to go away is not easy, and I know that saying no, in and of itself, won't stop the bureaucrats in Washington from trying to get their way.

States with a strong sense of federalism have, by simply ignoring the federal government, changed federal education policies, EPA rules, ADA policies, and welfare policies. It wasn't easy, it required strength of will, but it worked, and it was right for our country and our freedom.

But it's a start, and it's an important start.

States with a strong sense of federalism have, by simply ignoring the federal government, changed federal education policies, EPA rules, ADA policies, and welfare policies. It wasn't easy, it required strength of will, but it worked, and it was right for our country and our freedom.

There is a constitutional basis for federalism. Its purpose is sound and most important. It is critical to the protection of individual liberty.

A healthy respect for a strong federalist policy will ensure that liberty will thrive and survive in this country . . . and protecting liberty is, after all, the first duty of every public official in our Constitutional republic.

Each individual has more influence over the smaller governmental organizations, cities and states, than over the federal government. It is easier to change a city councilperson, a county supervisor or commissioner, or a state legislator than it is to change a Congressman. If that fails, it is easier to move out of the city or state, to vote with "your feet" if the city or state won't change.

Either way, these two truths act as a brake on the oppressive policies of local governments, and thereby protect individual liberty.

It is also in the state's interest to control the power of the federal government. If Congress decides everything, state legislators will be relegated to the role of federal bureaucrats. That is not healthy for our Constitutional republic.

If states fight for no other reason, we ought to fight to make ourselves relevant to the public policy process. The cause of liberty in this country began in the state legislatures. If it is to continue, it will be in the state legislatures.

A healthy respect for a strong federalist policy will ensure that liberty will thrive and survive in this country . . . and protecting liberty is, after all, the first duty of every public official in our Constitutional republic.

Ray Haynes is a state senator in California, representing western Riverside and northern San Diego counties. He is past president of the American Legislative Exchange Council and president of The Heartland Institute's Board of Legislative Advisors.

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Crime

Morgan Reynolds

Morgan Reynolds is director of the Criminal Justice Center at the National Center for Policy Analysis.

How to Stop Shooting Sprees

During one episode of the classic sitcom, "All in the Family," Meathead asked Archie Bunker: "What are you gonna do about airplane hijackers?"

"First, youse arm all your passengers," readily replied Archie.

Ha, ha, more tortured logic from that lovable knuckle-dragger. Everyone pictures passengers shooting holes in the plane's fuselage, and each other, at the drop of a hat. "Gun nuts" like Archie can't think.

Archie's remedy is inappropriate for the airline problem—but what about his idea on *terra firma*, where most criminal attacks occur and there is no pressure-controlled cabin to worry about?

THE VALUE OF 'SHALL ISSUE'

From Colin Ferguson's Long Island Railroad massacre to Columbine High School, mass public shootings leave us stunned and horrified. What can be done to cut down on these shocking assaults on public safety?

A careful count by William Landes of the University of Chicago and John Lott of Yale University found an average of 21 such shootings per year from 1977 to 1995, rare events compared to other offenses.

After every one of these aberrant events, leftists demand "more gun control": longer waiting periods, more restrictions on purchases. Nearly *any* gun control will do. A lack of evidence that such regulations actually reduce public shootings fails to dampen the enthusiasm. One suspects the real agenda is not to solve a problem, but to reduce private gun ownership and expand the power of government.

There is, however, one law highly correlated with a sharp drop in multiple killings: a "shall issue" or "right-to-carry," concealed handgun law. This kind of law mandates that if a citizen meets certain objective criteria like age and no criminal history, then he or she shall be issued a permit to carry a concealed handgun upon request.

Landes and Lott find that the number of mass public shootings plummeted by 85 percent, mass murders dropped 89 percent, and injuries plunged 82 percent in the 14 states that have adopted shall-issue laws between 1977 and 1995. (Lott's book, *More Guns, Less Crime*, gives more detail.) Most of the decline comes in the first year of the law, leaving little doubt about the cause.

These huge effects remain even in the face of exhaustive econometric torture with many equations and specifications to control for factors like arrest rates, sentencing practices, income, and population characteristics. Nor are there any ill consequences, like an increase in bombings, to offset these dramatic gains.

Econometric results often are muddled and disputed. Yet Lott notes "the results of this study were the starkest and most surprising I've ever encountered in a lifetime of research."

19 STATES LACK CONCEAL CARRY

No other laws help. For example, higher murder arrest rates, although they deter murderers, have no effect on perpetrators of mass public shootings. Death penalty laws have no effect either, since the perpetrators usually plan to take their own lives anyway. And longer waiting periods for gun purchases have no statistical impact.

Violent nutcases exhibit substantial "rationality" because they respond to citizen deterrents. Police cannot be everywhere. Some would-be shooters decide not to attempt a massacre because their chances of "success" decline with armed citizens around, and those who try often are interrupted by armed citizens acting in self-defense, cutting down on the damage the killer wants to do.

The deterrent effect of right-to-carry laws is far bigger on mass public shootings than on conventional violent crimes. This makes sense because the odds of a criminal encountering an armed citizen in public places are much higher than for the usual crime involving a few people.

There is one law highly correlated with a sharp drop in multiple killings: a "shall issue" or "right-to-carry," concealed handgun law.

Licensed concealed handgun carriers are public benefactors and their rights are now protected in 31 states. States with serious infringements on this right to self-defense account for 90 percent of the mass public shootings. Legislators in these 19 states can learn from the success of the other states: Adopt right-to-carry laws and cut mass public shootings by 80 to 90 percent.

John Lott is a fearless scholar: In a career with a lot more mobility than he has desired, he's never won a tenured post and likely never will. He's been the victim of incredible invective and lies over his gun research. That's how the academic and think-tank left protects establishment doctrine from revisionist thinking. Saving innocents' lives through right-to-carry depends on a majority of state legislators in those 19 states exhibiting similar courage.

FOR MORE INFORMATION...

The Status of Conceal-Carry Laws in the 50 States. See how the states treat the question of conceal-carry. (*More Guns, Less Crime*, 2000, 2pp.)

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Education

George Clowes

George Clowes is managing editor of *School Reform News*, a monthly newspaper published by The Heartland Institute.

State-Federal Conflict on Vouchers

The United States Supreme Court is likely to be called in to resolve a state-federal conflict that has arisen from disparate court rulings on the constitutionality of the Cleveland voucher program. The Ohio Supreme Court ruled the program constitutional in 1999, while the Sixth Circuit Court of Appeals ruled the same program unconstitutional last December.

The high court already has intervened in the case, acting in November 1999 to stay an injunction that would have halted the Ohio Pilot Project Scholarship Program, as it is formally known. While such a stay provides no indication as to how the court ultimately might rule, it is worth noting what Justice Antonin Scalia said in the Court's more recent ruling to stay the Presidential election recount in Florida.

"[T]he issuance of the stay suggests that a majority of the court, while not deciding the issues presented, believe that the petitioner has a substantial probability of success," Scalia wrote.

The lack of alternative secular schools for voucher students troubled the Sixth Circuit Appeals Court, which regarded such a limited choice as having the "impermissible effect" of promoting religious schools.

The Court typically takes a case when lower courts reach opposite conclusions, which they have done in this case, notes Clint Bolick, litigation director for the Institute for Justice. In recent years, Bolick and other Institute lawyers have argued the case for school vouchers and education tax credits in court challenges in Arizona, Florida, Illinois, Maine, Ohio, and Wisconsin.

LOW VOUCHER AMOUNT IS THE KEY

A divided Sixth Circuit Court of Appeals rejected the Cleveland voucher program as unconstitutional in a 2-1 decision last December 11, saying government funding of tuition at private religious schools is a violation of the Establishment Clause of the First Amendment, which requires the separation of church and state.

The majority opinion held that Cleveland's $2,500 tuition scholarship limited participating families to sending their children to less-costly schools, which are predominantly sectarian. This "has the primary effect of advancing religion," said the court, and "constitutes an endorsement of religion" in violation of the First Amendment.

The Cleveland voucher program was approved by the Ohio General Assembly in 1995 in response to a court-ordered takeover of the Cleveland City School District due to mismanagement by the local school board. The program gives poverty-level students the opportunity to obtain special tutoring while remaining in the Cleveland public schools, or to attend another school—public or private—that is willing to cap tuition at $2,500 a year per student. The city's public schools currently spend over $10,000 a year per student, yet the district meets none of the state's 18 academic standards.

For the 1999-2000 school year, 56 schools, 82 percent of them church-affiliated, participated in the program. Although Cleveland's suburban public schools were invited to participate, none chose to do so, and thus no alternative public schools were available to voucher students. Of the 3,761 students enrolled in the program, 96 percent enrolled in sectarian schools.

This lack of alternative secular schools for voucher students troubled the Sixth Circuit Appeals Court, which regarded such a limited choice as having the "impermissible effect" of promoting religious schools. In fact, the court reasoned that the low value of the voucher—only a quarter to a half of the per-pupil cost at public and private secular schools—actually favored religious schools because they "often have lower overhead costs, supplemental income from private donations, and consequently lower tuition needs."

REMOVING THE CONSTITUTIONAL CLOUD

In stark contrast, the Ohio Supreme Court in 1999 ruled that the program simply provided scholarships to certain children to allow them to attend an alternative school.

"[F]unds cannot reach a sectarian school unless the parents of a student decide, independently of the government, to send their child to that sectarian school," said the court, noting any link between government and religion arises only as a result of the "genuinely independent and private choices" of parents, "who act for themselves and their children, not for the government."

On the one hand, the Ohio Supreme Court has reviewed the program and ruled, "The primary beneficiaries of the School Voucher Program are children, not sectarian schools."

On the other hand, the Sixth Circuit Court of Appeals has looked at the exact same program and ruled, "This scheme involves the grant of state aid directly and predominantly to the coffers of the private, religious schools."

"This is the U.S. Supreme Court test case we've been waiting for to remove the constitutional cloud from school choice once and for all," said Bolick.

FOR MORE INFORMATION...

What Would a School Voucher Buy? Quality schooling doesn't have to be expensive. Here's why. (Cato Institute, March 1996)

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Environment

Angela Logomasini

Angela Logomasini is director of risk and environmental policy at the Competitive Enterprise Institute.

Driving States' Rights

I recently took my car in for a vehicle emissions test at a Virginia auto repair station. I was done within an hour. But if former Environmental Protection Agency (EPA) administrator Carol Browner had had her way, I would have likely waited hours at one of a dozen or so government-run centralized testing stations.

In 1994, Browner tried to force Virginia to implement centralized testing. If she had succeeded there, she would have forced that policy on the rest of the 49 states.

State lawmakers have grown accustomed to such federal intrusions, and they usually just relent. But as Becky Norton Dunlop shows in her recently released book, *Clearing the Air*, it doesn't have to be that way. State officials can challenge the federal bureaucracy and win.

As Secretary of Natural Resources under Virginia Governor George Allen (1994-1998), Dunlop stood firm against EPA-mandated centralized emission testing, even when that meant risking federal highway funds. Browner backed down when the newly elected Republican Congress threatened to amend the Clean Air Act.

As the Arizona case proves, even state government will pass awful laws. But the beauty of federalism is that Arizona's mistake remains Arizona's alone.

CHALLENGING EPA

States have many tools if they wish to challenge federal bureaucracies—particularly EPA.

The most critical challenge Dunlop details was EPA's attempt to mandate electric cars in 12 Northeastern states. The standards would have mandated that car manufacturers produce, and dealers sell, the "California car." The term comes from a 1990 California law that required 10 percent of the state's fleet to be "zero-emission" vehicles (which amounted to a mandate for electric cars).

As one of her first responsibilities, Dunlop found herself debating the issue with other state officials at an interstate commission created by the federal Clean Air Act. Eight of the 12 Northeastern states voted for the California car.

Dunlop knew, though, that a "zero-emission" mandate would not serve the interests of Virginia residents or the environment. Electric cars don't completely eliminate emissions; electricity production simply creates emissions elsewhere. And electric cars produce more of other pollutants (e.g., carbon monoxide), while disposal of lead acid batteries presents other problems. Moreover, "California cars" travel only 70 miles before needing hours of recharging, and they cost tens of thousands more than conventional cars.

Yet Browner followed the commission's recommendation and mandated the California car. The Allen administration sued EPA, and the court overturned the agency's rule, holding that "EPA's rule does not respect states' independent authority; it removes it."

That ruling was a substantial victory for federalism. While only Virginia challenged the rule in court, none of the other states involved—not even one of the eight that had voted for the standard—chose to implement the policy.

It should be no surprise that Virginia could prevail. Systematic research indicates that challenges to EPA rules have high chances of succeeding. In a recent analysis, Jonathan Adler found the agency loses the majority of legal battles against its rules, and it wins only about a third. The rest are thrown out for reasons not related to the substance of the case.

Clearly, state officials have opportunities to take back some of their rights . . . but they must pursue them.

FEDERALISM CONTAINS DAMAGE

By choosing to assert the case for federalism, the Allen administration was able to stave off a policy that has proven a disaster elsewhere. The California standards, due to be implemented in 2003, may not actually go into effect, due to problems associated with the costs of these cars.

Arizona chose to voluntarily pursue a similar policy, with terrible results. The Arizona law attempted to promote "alternative fuels" vehicles. But because they were so expensive, the law subsidized the purchase of those cars, with Arizona paying as much as $20,000 per car. Within just four months, hoards of opportunists took advantage of the program and effectively raided the state treasury—absorbing 10 percent of the entire state budget. The legislature quickly placed a moratorium on the law, and now must consider delaying tax cuts to pay off the costs of this failed experiment.

As the Arizona case proves, even state governments will pass awful laws. But the beauty of federalism is that Arizona's mistake remains Arizona's alone. If the Allen administration had not stepped in and defended its right to not go down that road, we might have seen that mistake sweep all the states in the Northeast. State officials everywhere should take note.

FOR MORE INFORMATION...

EPA's Record in Federal Courts. EPA can often be beaten in court. Jonathan Adler examines the record. (Reason Public Policy Institute, May 2000).

Fax Call 312/377-3000 and request documents **#2330301** (summary, 3pp.) and **#2330413** (study, 21pp.)

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Health Care

Merrill Matthews Jr., Ph.D.

Guest columnist Dr. Merrill Matthews Jr. is policy director for the American Conservative Network.

Drug Company Profits Aren't the Problem

Critics seem to think prescription drugs cost too much, and they point to drug company profits as proof. What's the harm if the federal government dips into these companies' pockets by forcing them to charge a little less?

NEW ECONOMY INDUSTRY

There are really two pharmaceutical industries. One mass-produces aspirin, cold medicines, ointments, and other over-the-counter drugs. The other pharmaceutical industry—the "pharmatech" industry—is a New Economy industry, where initial costs to create and test a patentable item are very high, but reproduction costs are usually minimal.

While it is true that many prescription drug manufacturers are profitable, and several have been consistently profitable over the years, those profits are not out of line with other successful New Economy companies and industries that produce products in high demand.

> *Profits are not the problem, they are the solution—ensuring that consumers have access to advanced pharmaceutical products for years to come.*

According to *Fortune* magazine's annual survey of the top 1,000 companies, the drug industry's median profit—the middle point between the most and least profitable of the 12 drug companies included—was 18 percent of revenue. Amgen had the highest profit at 33 percent, with American Home Products the lowest, having lost 9 percent. Most companies ranged between 15 and 20 percent.

Many companies that spend far less on research and development make more money than even the most profitable drug companies. Nabisco, for example, reported a 36 percent profit last year, according to *Fortune*. And Coca-Cola, which produces a product that is competitively priced and very affordable, had higher profits than the drug industry median for most of the 1990s.

Or how about the *New York Times*, which prints so many stories about excessive drug company profits? The *Times* made 10 percent last year. Gannett, publisher of *USA Today*, made 17 percent—right up there with the drug companies. And Tribune, a media conglomerate that includes the *Chicago Tribune*, the *LA Times*, and a number of broadcasting stations, made 46 percent profit.

Software companies are important to this discussion because they, like the drug companies, are New Economy companies. Like drug companies, software firms make knowledge-based products, and both spend a lot of money upfront researching and developing those products.

For example, pharmaceutical companies spent about $24 billion in 2000 developing and testing new drugs—about 21 percent of their sales, or more than any other industry and twice as much as the computer software industry. Even though software companies spent less than drug companies on R&D, Microsoft reported a 39 percent profit last year, while BMG Software reported 28 percent.

REPAYING HIGH FIXED COSTS

Once a knowledge-based company produces a prototype, mass-producing the product is usually very cheap. Companies charge significantly more than it costs to produce the product in order to recoup research and development outlays. Without the initial outlays, though, the product would never have been created. Without even more outlays on R&D, the company won't continue to create new products. That fact usually gets lost in the discussion.

Former Treasury Secretary Lawrence Summers understands the principle well. In a speech delivered in San Francisco last year, Summers noted that in an information-based economy, "the only incentive to produce anything is possession of temporary monopoly power—because without that power the price will be bid down to the marginal cost, and the high initial fixed costs cannot be recouped."

Yes, drugs can be expensive—in some cases, very expensive. But if the drug companies are allowed to continue their R&D unfettered, we will see more drugs that, while expensive, will make our lives better.

Thus, profits are not the problem, they are the solution—ensuring that consumers have access to advanced pharmaceutical products for years to come.

If Congress wants lower drug prices, it should enact policies that will lead to more drug company competition. Congress could, for example, reform Medical Savings Accounts to reduce consumers' insulation from the cost of health care, or eliminate the FDA's "efficacy" requirement that drives up the cost of creating new drugs.

Those two measures would go a long way toward making the drug industry more competitive. And with that competition would come more choice and lower costs. And if drugs are available and easily affordable, who cares how much money drug companies make?

FOR MORE INFORMATION...

Prices, Profits and Prescriptions. Merrill Matthews provides a more extended treatment of the subject in this 19-page study. (Institute for Policy Innovation, September 2000).

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Law

John E. Kramer

John E. Kramer is vice president for communications at the Institute for Justice.

Government Abuse at Work

This year marks a dubious milestone in American history: the 150th anniversary of the Fugitive Slave Act, which required that runaway slaves be returned to their masters. The accused had their fate decided by government officials, who were paid five dollars if they freed the alleged runaways, but ten dollars if they ordered the individuals South.

Could such perverse financial incentives to find individuals guilty and threats to punish those who championed freedom for their fellow man taint an American justice system today?

Unfortunately, the answer is yes. To see such a system in action, one need look no further than Nevada's Transportation Services Authority and how it gains financially by limiting the economic liberty of otherwise-free individuals and seeks to intimidate those who spotlight its abuses.

HOW THE TSA WORKS

In 1979, lobbyists representing existing limousine companies duped Nevada's legislators into creating a command-and-control licensing system. Those wishing to drive a limousine in Nevada must convince three government officials to grant a state-required "certificate of public convenience and necessity." This is the government telling the public what services are convenient and what services are necessary, as if the market weren't far better able to make such decisions.

> *Anything beyond safety requirements is the work of a state bureaucracy doing the bidding of anti-competitive companies.*

The TSA is then supposed to consider the application as an unbiased and independent guardian of Nevada's citizens. In practice, however, the TSA effectively hands the process over to existing companies, whose economic self-interest lies in keeping new competitors out.

The end result is that nearly all companies not already connected in some way to the Las Vegas transportation network get rejected or find the licensing fight so stacked against them they drop out in despair. From 1979 to 1998—the year the Institute for Justice filed suit against the agency to break up its state-enforced monopoly—only four new companies were admitted to the market, even as Las Vegas' population soared.

Since then, about a dozen new companies have been approved to provide limousine service. Most have been owned or managed by someone who already owned or regulated transportation companies in Las Vegas, or they've been approved with significant restrictions (demanded by existing companies who intervened in the application process) that effectively prevent them from competing with existing companies.

SILENCING CRITICS

This type of enforcement scheme relies on the fact that the ordinary man seeking to start his own company often does not have the money or stamina to fight the system. That is why Rich Lowre, who leads the Las Vegas-based Independent Limousine Owners/Operators Association (ILOA), called the Institute and asked for legal representation in ILOA's quest for economic liberty.

The Institute for Justice went to work in court and in the court of public opinion to open the market. It filed a lawsuit in state court; testified before the state legislature; and talked to the news media to spotlight how the state acted as an agent of private organizations, thereby preserving the limousine monopoly.

Apparently tired of the attention, the TSA and its cohorts pursued a motion with the trial court seeking to silence the Institute for Justice, its attorneys, and its clients. Joining a motion filed by one of the licensed limousine companies, the TSA asked the court to censure the Institute for Justice for speaking about the case in public, to strike portions of its complaint, to impose sanctions, and to refer its attorneys to the State Bar for disciplinary proceedings. Judge Ron Parraguirre rejected this blatantly unconstitutional effort to silence free speech.

The TSA should follow a simple standard when deciding if a new company will be allowed to provide its limousine service within the state: Limousines should be inspected and insured, and drivers should pass a background check to ensure they aren't dangerous behind the wheel. That's it. Anything beyond safety requirements is the work of a state bureaucracy doing the bidding of anti-competitive companies.

The state legislature and the governor are both aware of this outrage but have done nothing to correct the problem. Whether or not this unjust system survives is now up to the judiciary.

Nevada's Transportation Services Authority, which thrives by limiting the freedom of the politically disenfranchised, is the administrative descendent of the Fugitive Slave Act. Justice demands that the court remove the TSA's perverse incentives to find against those who come before it.

FOR MORE INFORMATION...

How Government Harms the Poor. Eric Schansberg explains how government policies—including restrictions on competition—often harm everyone, especially the poor. (Indiana Policy Review, Spring 1999, 6pp.)

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Politics

Ron Faucheux

Ron Faucheux is editor-in-chief of *Campaigns & Elections.*

Campaign Advice from a Legend

A couple of years ago, I received a phone call from Matt Reese, the legendary political consultant who cut his teeth in the 1960 West Virginia primary on behalf of John F. Kennedy. Reese wanted to talk about the consulting business, and he was angry.

Interrupted by an occasional wheeze, Reese bellowed that many of today's campaign consultants were phonies and con artists who were ripping off clients. He told me he had a lot to say because an "old man like me can say things that nobody else will say."

Within a week, Reese was dead. The interview I had planned never happened.

THE INSTANT ORGANIZATION

The first time I meet Reese was in the 1969 campaign for mayor of New Orleans. He had been hired by one of the candidates to create an instant organization—a concept he had invented and popularized—by using phone banks and volunteers to recruit and mobilize citizen supporters block-by-block.

Reese had understood that with the rise of television and the decline of ward bosses and their patronage-driven machines, there would be a nationwide vacuum in political organization. He intended to fill it by channeling average voters into a host of grassroots activities.

It was Reese's revolutionary idea that voter targeting, combined with direct contact, could produce a new-style campaign apparatus built from the ground up.

For every campaign activity, Reese had a name. There were Go Days, Coffee Days, Post Days, Blitz Days—and his famous Block Captain Kits. For each operation, he wrote a detailed manual. For decades, campaigners around the nation were using Reese's original plans, checklists, timelines, and organizational charts. Some of them had been copied so often you could hardly read them anymore.

In early 1995, shortly after the Republican sweep of the 1994 midterm elections, *Campaigns & Elections* sponsored panel discussions with experts from both parties. Analysis from most Democratic panelists centered on complex trends. But when it was Reese's turn, his advice was more down to earth: Go to the field, he thundered. "To win elections, get out the vote and motivate volunteers."

PURPLE EARS, GREEN NOSES

"There are two prospects to work in a campaign—the voter who is undecided, and the nonvoter who is for you," he explained. "I wish the Lord would make the voter who is undecided have a green nose and voters who are with us have a purple ear. When you go to the door and the voter has a green nose, you'd know you'll have to persuade him. If he has a purple ear, then you'd know you'll leave him alone until election day when you'll have to turn him out."

But since the Lord had not obliged, he said, it was the job of the political parties to find those purple ears and green noses.

Reese would repeat many times that political consulting was like going to the doctor. "The doctor asks, 'When does this hurt?' The patient answers, 'When I do this.' And the doctor says, "Well, don't do that,' and hands the patient a bill. I made a good living saying to candidates, 'Don't do that.'"

Three other things he'd say to candidates were: Keep your focus, resist the pressures to stray, and don't yield to the frustrations.

As a consultant who blazed new frontiers and made a lot of money—he sold his firm in 1987 for many millions—Reese was one of the first to see the potential of applying the tools of political campaigning to public affairs and issue lobbying. If you could build an instant organization and elect a councilman in Fort Wayne, then you could get thousands of voters to call and write legislators on behalf of legislation sponsored by AT&T, Philip Morris, or Planned Parenthood.

It was Reese's revolutionary idea that voter targeting, combined with direct contact, could produce a new-style campaign apparatus built from the ground up.

Not everyone sees the rise in paid-for grassroots-mobilization as healthy. But Reese and his colleagues have begged for years to differ; before grassroots came along, they have pointed out, it was all in the back room.

Another legacy left by Reese is the scores of men and women who started off their careers under his tutelage. Some of them are, today, among the nation's most successful consultants.

Reese lived just long enough to see many candidates in the '98 elections win precisely because they did, in fact, go to the field, motivate supporters, and get them out on election day.

For Matt Reese, politics was a human endeavor. Sure, there are the polls and the computers and the phone banks—but it was, in the end, about people. That idea—his idea—will always live where democracy thrives.

FOR MORE INFORMATION...

Campaigns & Elections magazine is published 10 times a year by Congressional Quarterly Inc. A year's subscription is $49.95

PHONE For more information, call **800-771-8252**,

WWW or visit the magazine's Web site at **www.campaignonline.com**.

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Privatization

Robin A. Johnson

Robin A. Johnson is director of the Privatization and Government Reform Center at the Reason Public Policy Institute.

Cleaning Up the Child Support Mess in Illinois

The holiday season of 1999 was a winter of discontent for many parents in Illinois dependent upon child support. Thousands of parents, mostly single mothers, waited for checks that were delayed due to a combination of misguided federal mandates, political favoritism, and bureaucratic bungling.

As the Christmas season approached, many single mothers received a lump of coal instead of the funds they were entitled to. An interim private management contract has since restored the regular flow of funds, and a final contract will be awarded in 2001 for privatization of the disbursement system.

This story, while having a happy ending, offers a useful case study of the benefits of privatization and the unintended consequences of poor public policy decisions.

POLITICAL DISASTER

The sorry saga began when the welfare reform act was passed by Congress and signed by President Clinton in 1996. In an effort to increase efficiency in the child support collection and distribution system, a provision in the law mandated that states centralize most child support processing in one disbursement and clearinghouse unit. Prior to the law being passed, circuit clerks in Illinois' 102 counties handled this responsibility with little difficulty.

Instead of seeking proposals from private sector firms to oversee child support processing, Illinois officials turned responsibility over to a politically connected circuit clerk's office in DuPage County (west suburban Chicago), with a contract awarded in February 1999. Problems began almost immediately.

Families began receiving late checks while complaints flooded into the offices of circuit clerks and state legislators. The problem intensified during the fall of that year as tens of thousands of families suffered when support checks were delayed weeks and even months.

Some legislators from both parties were critical of the arrangement and argued the contract should have gone to a private firm from the beginning. As the General Assembly moved toward passing a bill to privatize child support disbursement, DuPage County officials withdrew from the $8.6 million annual contract.

In March 2000, Governor George Ryan announced the private management firm of Deloitte & Touche would assume oversight over the DuPage County facility until a new contract was awarded. Under interim private management, the kinks in the system seem to have been worked out, and the process is running smoothly.

Two independent audits completed in early 2000 sharply criticized the State Disbursement Unit in DuPage County and the selection process used to choose DuPage. An audit by Bank One, authorized by Ryan, found there was "insufficient staffing, inadequate management, poor system design, and a general lack of customer services and employee training" in the DuPage County circuit clerk's office. A state auditor general's report raised serious questions about the selection process, including the no-bid contract and lack of performance incentives or penalties.

PRIVATE SECTOR SOLUTIONS

State Representative Mary K. O'Brien (D-Coal City) is among those who championed privatization from the beginning. She supported structuring the contract to include financial penalties for poor performance and believes the new combination of privatization and performance contracting will ensure the system runs smoothly. O'Brien added, "It gives me some level of comfort that it's going to be turned over to the people who know what they're doing and have a stake in its success."

> *Thousands of parents waited for checks that were delayed due to a combination of misguided federal mandates, political favoritism, and bureaucratic bungling.*

Illinois will join roughly half the states with privatized child support processing. The other half perform the work in-house or team up with other government units, such as counties.

Two of the three firms that originally submitted bids in Illinois have experience with processing child support and have contracts with several nearby states, enabling Illinois officials to easily compare performance and quality of services.

Lockheed Martin began processing child support payments for governments in 1991 and currently serves 13 states, including Michigan and Wisconsin. Tier Technologies has four years of experience and has contracts with eight states, including Minnesota and Kentucky.

Private management and the resulting improvement in child support disbursement brought good cheer to recipients and their families in 2000. Private management cleaned up an enormous mess and reestablished the smooth and efficient flow of funds for an important service.

Unfortunately, state officials in Illinois learned this lesson at the expense of many innocent women and children.

FOR MORE INFORMATION...

Child-Welfare Reform and the Role of Privatization. Get more ideas on the role of private sector actors in child welfare functions. (Reason Public Policy Institute, October 2000)

Call 312/377-3000 and request documents **#2418408** (20 pp.) and **#2418409** (19 pp.)

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A New Twist in Regulating Imports

Murray Weidenbaum

Murray Weidenbaum is chairman of the Center for the Study of American Business.

Many Americans believe this nation is an island of free trade in a world of protectionism. The truth, of course, is more complex. Without underestimating the overseas barriers facing our exporters, it is useful to recall the obstacles the United States imposes on imports.

That array of protectionism includes Buy American statutes enacted by various governments; the Jones Act prohibiting foreign vessels from engaging in waterborne commerce between U.S. ports; laws limiting imports of agricultural and manufactured products ranging from brassieres to pillow cases; selective high tariffs on specific items such as textiles and clothing; and regulatory barriers aimed at protecting domestic producers, notably building codes.

UNREALISTIC COST COMPARISONS

Perhaps the most pernicious protectionist laws are the anti-dumping and countervailing duty provisions. Both statutes aim at imports selling here below cost. The statutory definition of "cost" is unrealistic.

Dumping is defined as selling a product for export below its "fair value," which is generally supposed to be the price prevailing in the home market (plus an arbitrary high upward adjustment, supposedly for profit). Anti-dumping duties are levied equal to the amount by which the goods are sold here below "fair value." It's illegal, in other words, for a company to offer a bargain.

Countervailing duties are intended to offset the price advantage an import may have because of foreign subsidies. These special tariffs increase prices by an amount equal to the computed subsidies.

There are many problems with these two statutes from the point of view of maintaining open markets and protecting the consumer. For example, if sufficient sales are not made in the home market, the base price used in the calculations may be that used in a "comparable" market in a third country—no matter how farfetched the comparison. At times, costs in central Africa were used to estimate the home cost of imports from Poland!

Unfortunately, both the anti-dumping and countervailing duty laws are longstanding and prospects are not bright for eliminating either of them. Worse, in late 2000 Congress added a novel twist to these two venerable trade restrictions that sets a terrible precedent.

RELIEF FOR LAWYERS

Buried in the Appropriations Act for the Department of Agriculture for the fiscal year 2001 is a provision added late in the process, without the benefit of a public hearing. The absence of any hearing means the implications of the new provision could not be debated before Congress acted.

The new provision requires that anti-dumping and countervailing duties are no longer to be deposited into the U.S. Treasury. Rather, all of this money will be sent to the companies who petitioned the government to take the protectionist actions.

This radical new provision represents the "bounty hunter" approach to trade policy. The traditional countervailing and anti-dumping duties, no matter how misguided, were intended to level the international competitive playing field. Depositing the proceeds into the Treasury was an indirect way of recompensing the public for the higher prices consumers have to pay as a result of these two laws.

But giving the proceeds to the companies that initiated the cases means they can make a profit on the deal. Moreover, more litigation is encouraged. Even if an entire industry is supposedly harmed by the trade practices at issue, the cash goes only to those who filed the legal action.

A new provision of the Department of Agriculture's budget will reward U.S. firms that petition the government to take protectionist actions.

Worse yet, we can expect that a host of lawyers will volunteer to take on many more such cases on a contingency fee basis.

It is not surprising that in Washington, the new bounty hunter provision is known informally as the Trade Lawyers Relief Act. It is not beyond imagination to expect that the successful petitioners will use some of their portion of the new bonanza to make political contributions to the legislators who voted for this special interest subsidy, opening the door for yet another round of special interest laws.

Yet, that may not be the end of the line.

In recent years, many nations have retaliated against what they consider to be unfair American anti-dumping actions by instituting similar cases against our exports to them. It is unlikely that, in the case of this latest assault on open trade, they will merely turn the other cheek. Moreover, we can expect that some nations with which we trade will take our "bounty hunter" provision to the World Trade Organization charging a violation of our international commitments. So much for being an island of free trade!

FOR MORE INFORMATION...

The Unintended Consequences of Trade Adjustment Assistance. Government programs designed to compensate workers harmed by import competition weaken the gains from trade and raise troubling issues of equity. (Cato Journal, September 1998, 10 pp.)

Fax Call 312/377-3000 and request document **#1980435**

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Taxes

Bill Ahern

Bill Ahern is communications director for the Tax Foundation.

Complying with Federal Income Tax Code Is Costly

Most Americans naturally think of their income tax burden simply as the amount at the bottom line of their 1040 form. Economists, on the other hand, may express Americans' tax burden as a percentage of GDP or even as a date on the calendar, such as Tax Freedom Day.

But all such measures fail to register another cost to taxpayers—the cost of complying with the tax system.

It is important for the public to have an estimate of this cost because the performance of the economy is dramatically affected by the state of tax law. If lawmakers create an Internal Revenue Code that is terribly complex or that changes rapidly, taxpayers may not be able to obtain a reasonably certain conclusion about how taxation will affect a business plan or investment. When the tax consequences of various economic activities are unpredictable, then tax policy is handicapping the growth and dynamism of the U.S. economy.

In fact, the U.S. income tax—the core of our government's tax system—is one of the most complex legal structures currently used for taxation by any government in the world.

Income tax complexity is almost wholly related to tax base questions: that is, questions or uncertainty about the timing or definition of taxable transactions. In other words, an income tax is inherently complex because it is so difficult to define income and determine when to recognize income and expense for tax purposes.

Over time, the political give-and-take has made these difficult tax base questions inordinately complex. The definition of taxable income has not only expanded dramatically, but it has undergone chronic change.

As if the complexities inherent in taxing income did not pose a sufficiently daunting challenge to the writers and administrators of the tax code, political and social demands must also be taken into account. In particular, two goals for the code that contribute to complexity are "fairness" and social utility. They come into play when determining how much individual taxpayers should owe—the "ability-to-pay" principle—and when providing incentives for socially beneficial activities.

We quantify the code's complexity in a way that makes clear how unnecessary much of it is. In 1999, individuals and businesses spent over 4.3 billion hours complying with the federal income tax, with an estimated cost of compliance of over $125 billion. This amounts to imposing a 12-cent administrative burden for every dollar the income tax system collects.

Costs to Individuals for the Federal Income Tax System, 1999

		Estimated Hours per Form					
Forms	Numbers of Returns	Record-keeping	Education	Form Preparation	Packaging	Total	Total Hours
1040	72,825,100	3.25	2.7	6.4	0.6	12.9	935,802,535
1040A	15,590,600	2.3	3.2	6.1	2.0	13.6	211,252,630
1040EZ	17,478,600	0.1	1.6	1.8	0.3	3.8	65,836,060
1040ES	41,254,300	1.3	0.3	0.8	0.2	2.6	106,573,608
1040X	3,084,000	1.3	0.5	1.2	0.6	3.6	10,948,200
4868	7,712,900	0.4	0.2	0.3	0.2	1.1	8,355,642
2688	2,778,300	0.0	0.1	0.2	0.3	0.6	1,759,590
1041	3,486,700	46.6	18.4	34.9	4.3	104.2	363,372,252
1041ES	1,615,100	0.3	0.3	1.5	1.0	3.1	5,006,810
1040 Schedules							
Sch A	48,988,318	3.1	0.7	1.6	0.3	5.7	276,783,994
Sch B	50,798,115	0.6	0.1	0.4	0.3	1.4	71,963,996
Sch D	33,223,125	1.1	2.3	1.7	0.6	5.6	184,942,061
Sch E	19,905,034	2.9	1.1	1.3	0.6	5.9	116,444,450
Sch EIC	21,685,925	0.0	0.0	0.2	0.3	0.6	13,011,555
Sch H	410,875	0.8	0.5	0.9	0.6	2.7	1,116,211
Sch R	558,094	0.3	0.3	0.5	0.6	1.7	920,856
706 and 706NA	113,600	10.8	6.9	12.7	9.7	40.1	4,551,573
709	273,900	0.7	1.1	1.9	1.1	4.7	1,287,330
Total (Forms + Schedules)	341,782,587	NA	NA	NA	NA	NA	2,379,929,354

FOR MORE INFORMATION...

Can the IRS Be Reformed? Reform of the IRS is futile as long as it is required to raise more and more money through an increasingly complex tax code. (National Center for Policy Analysis, December 1997, 2pp.)

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Technology

Bartlett D. Cleland

Bartlett Cleland is director of the Center for Technology Freedom at the Institute for Policy Innovation.

Four Issues Facing Technology

Now that the new Congress and President are getting settled in office, just what are the policy implications of GOP control of the executive and legislative branch, particularly for the world of technology?

Interestingly, the next couple of years may find the largest influence on the technology industry coming from the individual states, rather than Capitol Hill or the White House. Of the four issues expected to be key in the next few years, at least two and likely three will play themselves out in the states.

What are these four issues?

- an Internet tax—specifically, taxation on remote sales;
- privacy, and possibly security;
- intellectual property protection; and
- broadband deployment.

None of these issues is new to the technology industry.

Internet tax. Regardless of what happens on Capitol Hill, the issue of Internet taxes—more specifically, the remote taxation of commerce—will remain a topic of much discussion. Several state-level initiatives are underway in an attempt to tax those who do not have a physical presence in the state at the time of purchase.

The next couple of years may find the largest influence on the technology industry coming from the individual states rather than Capitol Hill or the White House.

The National Governors Association is attempting to form a compact of states, posing a Constitutional challenge to the ban on remote taxation. Also expected to be prominent in 2001 is the Streamlined Sales Tax Project, which seeks common definitions of a tax base in an attempt to radically simplify state tax structures.

At the federal level, the debate will continue as to whether the current moratorium on discriminatory and multiple taxes on the Internet from the federal and state level should remain.

Privacy. Already receiving a great deal of state-level attention—in studies, commissions, and legislation—is the question of privacy protection in an electronic age. The issue splits the technology industry between those who want a legislative fix, and those who oppose government intervention where industry self-regulation has yet to be tested.

The greatest challenge with respect to privacy is that decision-makers must take the time to understand the many issues that are often conflated into privacy, including security and "anonymity" versus "privacy."

In Washington, policy-makers will be asking if privacy issues are best resolved at the federal or state level. Will the individual states be permitted to move ahead with their own agendas, or should the federal government pass national legislation aimed at preempting action by the states?

Intellectual property protection. A matter of such great importance that the Founding Fathers addressed it in the Constitution, intellectual property has become the very basis of the U.S. economy. Very little will happen in the states on this issue because of its Constitutional protection.

Nevertheless, state elected officials should stay abreast of current developments. Related controversies, such as those surrounding the regulation of Internet access providers, will be raised, if not ultimately addressed, at the state level.

Congress is expected to re-examine the Digital Millennium Copyright Act to determine the proper balance between content protection and responsibility of an Internet service provider.

Broadband deployment. The future of broadband technologies—cable, satellite, traditional dial-up, and digital subscriber lines (DSL)—will affect everything from the digital divide, to education, to entertainment. Virtually every Internet-age method of communication is ultimately affected by broadband.

Most of the activity on this question will take place at the federal level, as various agencies and Congress grapple with myriad deregulation and competition issues. But many states and localities already have passed ordinances, rules, or laws that have serious implications for the speed, cost, and freedom of technology.

Of course, other issues of great importance to the technology industry will emerge. Some are already known: at the federal level, making the research and development tax credit permanent will be an important issue; and at the state level, elimination of access taxes currently in place will be key. Nevertheless, the four issues identified here will be most prominent.

The tremendous complexity of technology issues will place a great weight on the shoulders of all elected officials. If they are to make wise decisions supportive of America's growing technology economy, they must understand that their decisions will affect not only the narrow subject of interest, but also the much broader scope of technology's future.

FOR MORE INFORMATION...

Access to the Internet: Regulation or Markets? This executive summary of a popular *Heartland Policy Study* provides a good overview of the issues involved in the question of "open" or "forced" broadband access. (The Heartland Institute, September 1999, 4pp.)

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Who's Conservative Now?

Glenn Sheller

It is a testament to Al Gore's weakness as a candidate that he could enter the Presidential contest as the presumed coauthor of so many positives—peace, virtual full employment, a booming economy, steady and serious declines in crime, poverty, and other social ills—and yet still manage to win less than 50 percent of the vote.

But it is no credit to George Bush that he, too, failed to garner even half the vote. Bush only timidly tried to differentiate himself from his rival. In fact, as the campaign progressed, both men beat a path to the innocuous political center, where they split the vote nearly perfectly between them.

It should be clear to both parties that they have a big problem: Neither is selling anything that a majority of voters wants to buy. The parties can stick close to the center and prolong this stalemate, or they can take a chance and put forward an agenda that actually proposes to do something. The Congressional elections of 2002 and the Presidential election of 2004 will go to the party that solves this problem first.

It should be clear to both parties that they have a big problem: Neither is selling anything that a majority of voters wants to buy.

OLD LABELS REVERSED

But this difficulty is far larger for Democrats than Republicans. That's because the old political labels have been reversed. The fact is that the major conservative party in America today is the Democratic Party. On any major issue—Social Security, Medicare, race relations, education, defense—the Democrats circle the wagons around the status quo to defend the entrenched interests who benefit from keeping things just the way they are.

In fact, Gore made fear of change the mantra of his campaign, labeling even Bush's modest and tentative proposals, "risky schemes." With Gore, the party that once regarded itself as the cutting-edge of progress and reform now terrorizes its constituencies into action by holding up the dreaded prospect of change.

Meanwhile, it is conservatives (often ineptly represented by the GOP) who have embraced such progressive ideas as privatizing Social Security and parental choice in education. With enlightened leadership, the GOP could be exploiting this reversal of party roles to great effect, staking its claim as the true progressive party in America.

It is not compassionate to hold minority children hostage in failed public school systems that benefit only teachers unions. It is not compassionate to delude seniors that all is well with Social Security.

But to do this would require the Republican Party to stop apologizing for itself and to refuse, at long last, to acquiesce in its own demonization. It ought to begin by dumping Dubya's "compassionate conservative" label, since the phrase implicitly damns conservatism as heartless, thus accepting and legitimizing the prime Democrat slander against the GOP.

WHAT COMPASSION IS NOT

A confident and vertebrate GOP could easily demonstrate that Democrats have no monopoly on compassion. It is not compassionate for Democrats to hold minority children hostage in failed public school systems that benefit only teachers unions. It is not compassionate to prolong minority dependence with government handouts and racial preferences. It is not compassionate to delude seniors that all is well with Social Security and Medicare, nor to hide from young workers that in a few decades they face crushing levels of taxation to support these misconceived senior entitlements.

Republicans also should stop passively accepting Democrat pre-eminence in race relations. It is ridiculous that the Democratic Party—which built and maintained until the mid-1960s the Jim Crow system of Southern apartheid—should be allowed to get away with portraying the party that freed the slaves as a chapter of the Ku Klux Klan. The 1964 Civil Rights Act triumphed over Democratic opposition because of overwhelming support from Republicans.

The GOP's virtual silence on race is a double whammy, allowing Democrats to escape the burden of their own racial sin while simultaneously preventing the GOP from capitalizing on its own civil rights triumphs.

For 70 years after the Civil War, black voters were Republican voters. The GOP could reclaim that allegiance by working to free blacks from public school systems that leave their children educationally crippled and unequipped to seize the opportunities available to everyone else in America. Republicans could become the champions of individual black empowerment, success, and liberation from the plantation of Democratic paternalism.

But none of these things will happen until Republicans begin to take serious stands on issues such as these, until they vigorously reject and refute Democrat slanders and historical revisionism, until, in other words, they give the American people something worth voting for.

None of that happened in this election, and it shows.

Glenn Sheller is an editorial writer for The Columbus (Ohio) Dispatch.

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Lottery Revenues: An Unstable Funding Source for Education

By John Hill, Ph.D.

South Carolina Governor James Hodges attempted to win support for his education lottery plan on the grounds it would allow South Carolina to "join the 37 other states that have successful lotteries." The state's Board of Economic Advisors has also produced a study in support of legalizing a lottery, citing Connecticut as a superior example of the stability lottery revenue can achieve.

In fact, however, few lotteries are successful when it comes to providing steady revenue. The fact that some state lottery revenues increase in some years is no sign of stability. On the contrary, state lottery profits fluctuate wildly.

In 1998, for example, the only factor that kept three-fourths of the nation's lotteries in the black was the presence of two gigantic Powerball jackpots in May and July. Even those record-breaking jackpots came with a price, though: For weeks after the massive prizes were awarded, local lottery ticket sales plummeted. After all, if a dollar can win $200 million, why gamble it on a jackpot worth only $10 million?

Lottery revenues are inherently unstable due to increased competition, both from lotteries in surrounding states and from other forms of legalized gambling. In 1970, so few lotteries existed that their sponsoring states received an average of 43 cents for every dollar wagered. By 1998, that average had fallen to around 30 cents.

> *Lottery revenues are inherently unstable . . . . The state's citizens should not support any plan that relies on starting a government-run monopoly to produce erratic income in an already-saturated market.*

In 1999, sales for the entire lottery industry grew at a rate of less than 1 percent. And much of that growth came from the introduction of games that are not lotteries at all, such as keno and video poker. Likewise, the arrival of other forms of gambling, such as casinos, Internet gambling, and pari-mutuel wagering, means the lottery is no longer the only game in town.

In Kentucky, for example, competition from riverboat casinos along the state's northern border cut into lottery ticket sales in 1998, forcing the state to consider adding video lottery terminals to boost profits. In New Mexico, increased competition from video slot machines has been cited as the reason the state's three-year-old lottery has increased its payouts—and simultaneously cut its profit margin—to keep up interest in its games.

Gambling industry experts themselves concede the error of linking important programs, such as education, to unstable sources of income. Paul Dworin, editor and publisher of *Gaming and Wagering Business* magazine, admits, "states should get away from selling lotteries on the basis of education because lottery funding is not steady."

CONNECTICUT IS NO MODEL

Connecticut has been touted as an example of a successful lottery—but there is not a more atypical state. Connecticut has the highest per-capita income in the nation and the second highest per-capita disposable income of any state with a lottery. Small wonder Connecticut's lottery is considered "recession-proof." As for South Carolina, it ranks a meager 42nd in per-capita income and 43rd in per-capita disposable income, meaning fewer dollars can be played on the lottery.

Moreover, 95 percent of Connecticut residents live in metropolitan areas; slightly less than 70 percent of South Carolinians live in cities. Because they lack large, dense urban centers, Southern states like South Carolina are poor choices for lotteries. According to University of Mississippi researcher Donald Moak, "Southern states are not urbanized enough to support lotteries. That translates into much higher operating costs, which make lotteries economically questionable at best."

Granted, Connecticut's lottery ticket sales have increased about 19 percent each year since it began in 1972. However, Connecticut's profit margin—that is, the percentage of ticket sales going to the state's coffers—has steadily declined. In other words, Connecticut is selling more tickets, but the state is receiving a smaller and smaller piece of the revenue pie.

Connecticut is not alone. Of the 37 states and the District of Columbia operating lotteries, 28 have seen their profit margins steadily decline since their first year of operation. If starting year profits are compared to 1998 profits for each of these states, only five states and the District of Columbia have increased their profit margins.

Despite the governor's best intentions to improve the academic fortunes of South Carolina's youth, neither the state's citizens nor its businesses should support any plan that relies on starting a government-run monopoly to produce erratic income in an already-saturated market.

Dr. John Hill is a visiting fellow on lottery and gambling issues with the South Carolina Policy Council Education Foundation.

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Antitrust after Microsoft:

The Obsolescence of Antitrust in the Digital Era

By David B. Kopel

In February 2001, The Heartland Institute released its ninth book: Antitrust after Microsoft: The Obsolescence of Antitrust in the Digital Era, *by David B. Kopel. The 176-page book may be purchased for $8.95 (plus $3.00 shipping and handling) from The Heartland Institute, 19 South LaSalle Street #903, Chicago, IL 60603; phone 312/377-4000. Or order through Heartland's online store at www.heartland.org.*

U.S. v. Microsoft Corporation, the antitrust lawsuit brought by the U.S. Department of Justice and 19 state attorneys general in May 1998 against Microsoft Corporation, marked the end of an era of antitrust law theory, legislation, and action. Antitrust policy in the twenty-first century will be far different from what it was in the nineteenth, when the laws were first written, or in the twentieth, when it was put to use in a series of landmark cases that define the terms of the debate today.

The Microsoft case raises a number of important questions about the viability of antitrust in an era of rapid technological change. Government regulators must often proceed slowly to allow political oversight of their actions, allowing technology to sweep away products and competitors long before judgments are reached. The vagueness of antitrust law makes it particularly hazardous for the information technology industry, where partnerships and price-cutting are standard business practices. The Microsoft case and the history of antitrust enforcement reveal the ability of markets to discipline companies that attempt to extract monopoly profits. Ultimately, the best path to take may be to repeal the Sherman Act, the country's principal antitrust law.

> *"The rationale for treating Microsoft as a monopolist is evaporating with each passing month as the old battleground of the desktop PC becomes less and less relevant to consumers and to the IT industry."*

1. Technology is changing faster than regulators can move.

The information technology (IT) industry is changing so rapidly observers have coined the phrase "Internet Time" to track its progress. A rule of thumb is that three months of Internet Time equal one year of Standard Time.

Since 1998, when *U.S. vs. Microsoft* was filed, phenomenal increases have occurred in the power of computers, their ability to store information, and the speed of data transmission. Products at the core of the Microsoft case have disappeared, changed dramatically, been superceded by others, or been sold or merged with others. The result is a product landscape that would be almost unrecognizable to a juror or jurist studying Microsoft in 1998.

Technological change *per se* does not mean the Microsoft case ought to be dropped. It certainly does not mean Microsoft is innocent of the illegal business practices it is charged with. What *is* clear, though, is that Microsoft's actions have not stopped or even slowed the rate of technological innovation. Indeed, Microsoft products continue to play a major role in making much of that innovation possible.

The proliferation of new products and falling prices makes it difficult to defend the assertion that consumers were harmed during the 1990s by Microsoft's alleged monopolistic conduct. A much more likely explanation of what happened during the 1990s is that capital gravitated to the IT industry because it was lightly regulated by government and therefore able to innovate and grow rapidly. More regulation would kill the golden goose.

2. New competitors have emerged to challenge Microsoft's dominance.

Changing technology has transformed the market in which Microsoft competes. Competitors who once complained of Microsoft's market power have now merged with other competitors and become behemoths themselves. Microsoft faces serious competition from companies offering software and hardware products that weren't even invented 10 Internet Years ago.

Microsoft's core business—writing the operating systems of personal computers—is under serious challenge from Linux and (to a lesser extent) Apple. The center of gravity for computing is shifting away from the PC and onto such devices as Internet appliances, personal digital assistants, Web-enabled telephones, and other tools.

Competitors include names familiar to those who followed the antitrust trial—AOL, Netscape, Sun, and Oracle—but many new names have been added to the list: Sega, Sony, Red Hat, Symbian, Phone.com, Netpliance, AT&T/TCI, 3Com, Yahoo!, Excite, and even Microsoft's former ally, Intel. Some, like Red Hat, are using Linux to compete with Microsoft head-to-head for control of the PC operating system market. Others work to *shrink that market* by using non-PC devices to do what PCs used to do, and by writing programs in languages that can be read by computers using any operating system.

It was debatable a decade ago (Internet Time) whether Microsoft was a monopoly, but it is indisputable today that Microsoft faces intense competition from more directions than ever before. The rationale for treating Microsoft as a monopolist is evaporating with each passing month as the old battleground of the desktop PC becomes less and less relevant to consumers and to the IT industry.

3. Microsoft has not acted in the manner expected of a monopolist.

The story of the rise of Microsoft Windows, Microsoft Office, and Internet Explorer to their current positions of market dominance does not reveal the effects of an "applications barrier to entry," "path dependence," or any other non-market forces. Instead, it shows the steady application of Microsoft's high-volume/low-price strategy combined with continuous improvements to product quality and, in some cases, superior customer service.

Large market shares may be an inherent characteristic of the new Digital

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Economy, perhaps due to high fixed costs and low marginal costs or the fact that e-commerce allows consumers to identify and choose superior products much more quickly and accurately than they could in the Old Economy. Either way, there is little evidence that Microsoft has inordinate market power today or that consumers would be better off if Microsoft's competitors were somehow favored in the future.

The Sherman Act's language is so vague that *any* business operating in America today could be targeted for prosecution no matter what business practices it engages in. By casting so wide a net, it gives politicians and government officials discretionary power over which companies to target, a power that thoughtful observers from Adam Smith and the Founding Fathers to many economists today would say is just the opposite of what is needed for an economy to operate efficiently.

4. Microsoft's business practices are pro-consumer.

The same business practices defined as anti-competitive by the Department of Justice are routinely and legally used by other companies in the IT industry and in other industries. Microsoft priced Windows and its applications in the fashion of a company knowing it has powerful competitors ready to enter the market unless prices are kept low and quality high. Its practice of giving discounts to computer manufacturers who help develop new versions of Windows, include hardware to take full advantage of *Windows, and promote the Windows name is a standard practice in other industries that works to the benefit of consumers.*

That the antitrust trial court found discounts, aggressive language in internal emails, and a contract disagreement with Sun Microsystems to be evidence of antitrust violations shows how easily antitrust laws can be manipulated against almost any company—even a company whose success depends on continuously improving its products and lowering its prices. Whatever the ultimate result of the Sun/Microsoft contract dispute, a conflict over contract interpretation is not an antitrust violation and ought not to be at the center of an antitrust suit.

"The Sherman Act today is what it always has been: a tool for failed competitors to win in the political arena what they cannot achieve by satisfying customers in the free market."

5. Microsoft won the "browser wars" by producing a better product.

For three years, Netscape's Navigator had a monopoly in the Web browser market. It lost that monopoly when Microsoft introduced Internet Explorer (IE), gradually improved its quality, and in 1997 started giving IE to retail customers for free and encouraging other companies to integrate it into their programs. Due to America Online's acquisition of Netscape, Navigator is likely to once again be the market leader sometime in 2001.

It is puzzling that the Department of Justice would choose to overlook Netscape's monopolist past and anti-consumer practices (past and present) and target instead the company that broke up a monopolized market and gives away a superior product. As was true of the case against Windows, the business practices used by Microsoft to promote IE were not exclusionary, and invariably worked to the benefit of consumers.

So why the legal jihad against Microsoft? The company was a victim of industrial policy gone awry. Government officials tried to "pick a winner": a Web browser they thought, wrongly, had the potential to become an applications platform that could eventually help another company compete successfully with Microsoft Windows in the operating system market. Microsoft's decision to launch and aggressively market its own Web browser—a browser that most computer magazine reviewers now say is superior to the regulators' Chosen One—ruined the plan and embarrassed its authors.

6. The punishment proposed by Judge Jackson bears no relation to the charges against Microsoft.

The remedies imposed against Microsoft have little to do with the company's supposed illegal conduct. In particular, the proposed breakup of the company into Operating and Applications Companies goes far beyond whatever would be necessary to stop anti-competitive behavior. The order is radical (without precedent) and seems to reflect the resentment of a humiliated judge and Department of Justice, rather than a sincere attempt to attain justice.

Unsurprisingly, the punishments that would bear little relation to the alleged crimes would also fail to produce the desired outcomes. Consumers would not be helped. Breaking up Microsoft, according to one study, would force American consumers to spend $50 billion to $125 billion more for software over a three-year period. Competition would not emerge. Innovation, far from being encouraged, would be squashed under the thumb of Department of Justice bureaucrats. All companies and all industries that rely on the new digital technologies—and it is increasingly difficult to find any that do not—would be hurt directly or indirectly by the proposed remedies.

7. The problems with antitrust pre-date the Digital Era and the Microsoft case.

A review of the history of antitrust laws and prosecutions reveals that the original intent of lawmakers was to protect producers from low prices, rather than *consumers* from monopoly power. Antitrust cases are most likely to be invoked when prices are falling and consumers are benefitting, rather than in instances where monopolists are abusing their market power.

A close look at "antitrust's greatest hits"—the Standard Oil case of 1906, the Alcoa case in 1937, and the breakup of AT&T in 1981—reveals the same patterns of arbitrary rulings, disregard for consumers, and political interference with the administration of justice as were on display in the Microsoft case of 1998. Misinterpretations of these cases constitutes many of the "facts" and nearly all of the vocabulary used to defend antitrust law from its critics.

High-tech companies can look at the history of the transportation industry for insight into the choices they face. The railroad industry took the path of heavy-handed regulation, which created a legacy of inefficiency and bankruptcy that continues to the current day. Passenger trains today, for example, account for less than 1 percent of all trips. In sharp contrast is the automobile industry, which was subject to relatively light regulation. Today that industry is characterized by innovation, growth, and responsiveness to consumers.

8. Antitrust laws ought to be revised or repealed entirely.

The Microsoft persecution is not an isolated case of prosecutorial excess. It is the flagship case of antitrust at the beginning of the twenty-first century. The Department of Justice's Antitrust Division loudly promises that the Microsoft case is the vanguard of many more Digital Economy cases to follow. The consequences for information technology companies and all the companies that rely on them would be dire indeed.

If the Microsoft case is the best the Antitrust Division has to offer America, then there is no reason to keep the Sherman Act. The Sherman Act today is what it always has been: a tool for failed competitors to win in the political arena what they cannot achieve by satisfying customers in the free market. The fast pace of the digital era makes relying on government bureaucracies even less defensible today than it was in the past. It is long past time to repeal the pernicious Sherman Act.

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Judicial Tyranny in Ohio

David J. Owsiany, J.D.

Finding for the second time that the state of Ohio's system for funding schools is inadequate, the Ohio Supreme Court continued its attack on the doctrine of separation of powers and, ultimately, on Ohio's taxpayers. The court struck down the school funding system despite the fact that the Ohio Constitution leaves funding of a system of common schools entirely under the jurisdiction of the General Assembly.

Such usurpation of authority by the Ohio Supreme Court is not new, nor is it applied only to education. In August 1998, the court struck down Ohio's tort reform statute, enacted in 1996. That statute was designed to reform the personal injury lawsuit system in Ohio by, among other things, capping big-dollar jury verdicts and creating disincentives for filing frivolous lawsuits.

The [state supreme] court is fast becoming the premiere policy-making body in Ohio—despite the fact that the judiciary's role is to interpret the law, not create it.

ACCUMULATION OF POWER

James Madison argued in favor of ratifying the U.S. Constitution more than 200 years ago, calling special attention to how the doctrine of separation of powers creates security for the rights of the people. According to Madison, the accumulation of too much power in one branch of government amounts to tyranny.

The Ohio Constitution provides that same security by creating a system of checks and balances, prohibiting one branch of government from exercising too much power. Unfortunately, a majority on the state court today refuses to accept any limitation on its authority to establish public policy. The court is fast becoming the premiere policy-making body in Ohio—despite the fact that the judiciary's role is to interpret the law, not create it.

Worse still, the state court has not merely extended its reach beyond its constitutional limitations . . . it has extended its reach into the pockets of Ohio's citizens. The court is effectively dictating tax policy, even though the state constitution specifically gives authority over taxation to the General Assembly and governor.

The court is effectively dictating tax policy, even though the state constitution specifically gives authority over taxation to the General Assembly and governor.

By striking down Ohio's system of school funding, the court sent a clear message to the General Assembly and the governor: Spend more taxpayer dollars!

TORT TAXES

The court's influence over spending decisions is not limited to public programs. By striking down the tort reform statute, for example, the court imposed financial costs on taxpayers. It is estimated that product liability costs represent approximately 20 percent of the price of a ladder and 50 percent of the cost of a football helmet. One study found the product liability system added "hundreds" of dollars to the price of each new car sold. These hidden "tort taxes" could have been reduced under the tort reform statute.

In other cases, the court has gone out of its way to rewrite private contracts in order to impose liability. In 1999, the court held an insurance company liable under a commercial automobile liability policy where the driver was involved in an accident while driving his wife's car on his own time. Undoubtedly, the driver's employer and the insurer did not intend coverage under a commercial policy where an employee is driving a spouse's car while engaged in a personal activity.

The effect of imposing liability in cases like this is to drive up the cost employers must pay for commercial liability policies. These costs are passed on to consumers in the form of higher prices.

The next time you think you're paying too much in taxes, or too much for an item at the hardware store or for an insurance policy, don't assume the blame lies with "tax and spend" legislators, "greedy" merchants, or "price-gouging" insurance companies. The real culprit may be the Ohio Supreme Court.

During the American Revolution, one of the colonists' rallying cries was "no taxation without representation." Approximately two and a quarter centuries later, the Ohio Supreme Court is forcing various taxes and fees on Ohio's citizens without authority to do so under the constitution, and without the consent of the citizens' elected representatives.

David J. Owsiany is president of The Buckeye Institute for Public Policy Solutions, an independent, nonprofit education and research organization based in Columbus, Ohio.

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